



Tackling social dumping and fraud in the Belgian construction sector

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Description

In Belgium, important steps have been taken to fight social dumping and fraud in the construction sector. In 2015, Belgian social partners together with other stakeholders identified 40 measures (27 national and 13 EU measures) to fight unfair competition in the construction sector. A year after the implementation of this plan, 17 of the 27 national measures have already been partly or completely implemented.

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A posted worker is an employee who is sent by his/her employer to carry out work in another EU Member State on a temporary basis. Total employment in the Belgian construction sector has been particularly hard hit by posting. Approximately 30% of the total workforce in the Belgian construction sector are incoming posted workers. This share of posted workers within the Belgian construction sector has doubled between 2011 and 2014. The impact of posting in terms of full-time equivalent (FTE) employment is nonetheless lower since most of the posted workers are posted for only a "short" period. It amounts to approximately 12% of total employment in construction in FTE if we assume that the average posting period is about 55 days per year (De Wispelaere and Pacolet, 2016a; 2016b).

The Belgian construction sector is considered to be very vulnerable to undeclared work. For instance, in the Belgian national accounts, turnover for the construction sector has been "upgraded" by more than 20% and the operation surplus by almost 50% in order to obtain a more realistic view of the economic value of the sector (Pacolet et al., 2009). The employment of posted workers also seems to be open to fraud, as cases of non-respect of minimum wages and other terms or conditions of employment are frequently reported. For instance, a questionnaire submitted to

Belgian contractors showed that already in 2007 about 31% to 53% of local companies had received offers for subcontracting which they suspected to be unfair (Pacolet and Baeyens, 2007). Moreover, inappropriate use of the so-called "A1 form" is frequently reported by labour inspectors. This form proves that the posted worker remains subject to the legislation of the sending Member State and thus pays social contributions in this Member State. In 2012, Belgium implemented an anti-fraud rule which allows the inspectors to unilaterally withdraw the A1 form in cases of abuse, so that social security contributions need to be paid in Belgium. However, the European Commission decided to refer Belgium to the Court of Justice for refusing to recognise the A1 form.

It is important not to mix up fraud with so-called "social dumping" resulting from the applicable EU rules or as a reaction to them. Social dumping may occur without state intervention, for instance when high-cost producers are displaced by low-cost producers. It may also result from state intervention through a reduction of labour costs. For instance, measures have been taken by Belgium to reduce the tax wedge on labour through cuts in personal income taxation and social security contributions. However, both types of social dumping will have a negative impact on the financing of the welfare state.

In 2015, the Belgian stakeholders in the construction sector (see reference) identified 27 national and 13 EU measures to fight unfair competition. Key national measures of this plan include the following:

- The compulsory “LIMOSA” registration system, which Belgium introduced in 2007 to better supervise the number of foreign employers performing temporary activities in Belgium, will be improved.
- Since March 2016, registration of attendance on construction sites has become compulsory for anyone who performs work on a construction project of more than €500,000 (Checkinetwork).
- A “construbadge” will be introduced enabling visual identification of the construction worker and his/her employer.
- A “Point of Contact for Fair Competition” has been created where a citizen, a company or an organisation can report if (s)he suspects that a citizen or a company is committing social security fraud. Moreover, if a posted worker has problems with the payment of wages, working hours, bonuses, safety equipment or reimbursement of costs, (s)he can contact the labour inspection services.
- More labour inspectors have been recruited.

Outlook & Commentary

At EU level several steps have been taken to fight social dumping and fraud. In March 2016, the European Commission presented its revised “Posting of Workers” Directive (Directive 96/71/EC). In 2014, some important steps had already been taken via the so-called “Enforcement Directive” (Directive 2014/67/EU), improving the enforcement of the 1996 “Posting of Workers” Directive. Finally, there is the newly introduced European platform to prevent and fight undeclared work. However, here we focused on the actions at Belgian level.

A year after the implementation of the aforementioned plan to fight unfair competition in the Belgian construction sector, 17 of the 27 national measures have already been partly or completely implemented. By contrast, almost all proposed EU measures should still be adopted. For instance, the implementation of a limited period of validity for the A1 form of maximum 6 months or of a uniform procedure to grant the A1 form. Furthermore, the collection of the proper amount of social contributions and income taxes by the sending Member State should be ensured.

Further reading

ACV Bouw, ABVV bouw, ACLVB, Confederatie Bouw, Bouwunie, Fema, Staatssecretaris voor Bestrijding van de sociale fraude Bart Tommelein, Minister voor Middenstand, Zelfstandigen en KMO Willy Borsus, SIOD, FOD Sociale zekerheid, FOD WASO, RSZ, RVA (2015), Plan voor eerlijke concurrentie – 40 concrete maatregelen voor de bouwsector / Plan pour une concurrence loyale : 40 mesures concrètes pour le secteur de la construction, Brussels.

De Wispelaere, F. and Pacolet, J. (2016a), An ad hoc statistical analysis on short term mobility – economic value of posting of workers, Leuven.

De Wispelaere, F. and Pacolet, J. (2016b), Detachering naar België vanuit andere EU-lidstaten. Wat we zelf meten, meten we beter?, Gids op maatschappelijk gebied, September.

Pacolet, J. and Baeyens, K. (2007), Deloyale concurrentie in de bouwsector. Een terreinverkenning van mechanismen van sociale fraude, hun omvang en hun gevolgen voor de sector, Leuven.

Pacolet, J., Perelman, S., Pestieau, P., Baeyens, K. and De Wispelaere, F. (2009), Zwartwerk in België – Travail au noir en Belgique, Leuven / Den Haag.

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